**HIGH COURT OF UTTARANCHAL AT NAINITAL.**

(Court's order whether the case is or not approved for reporting)
[Chapter VIII rule 32 (2) (b)

Description of the Case.

Criminal Appeal No. 101 of 2005

Alok Haldar .....Applicant

Vs

State of Uttaranchal .....Respondent

Approved for reporting.

~~Not approved for reporting.~~

Date of Decision 1st August, 2006

Initial of Judge.

**(B.C. Kandpal, J.)**

**In the High Court of Uttaranchal, at Nainital.**
**Criminal Appeal No. 101 of 2005**

Alok Haldar S/o Vimal Haldar
R/o Tegour Nagar, P.S.
Sitarganj, District U.S. Nagar .....Appellant.
Versus
State of Uttaranchal ....Respondent.

Sri Vinod Sharma, learned counsel for the appellant.
Sri Nandan Arya, learned A.G.A. for the State.

**Hon'ble B.C. Kandpal, J.**

This criminal appeal has been preferred by the appellant, against his conviction and sentence, passed by Addl. Sessions Judge/II F.T.C., Udham Singh Nagar, vide his judgment and order dated 3-5-2005, in S.T. No. 180 of 2003, State Versus Alok Haldar and others, whereby the accused Alok Haldar was convicted U/S 306 I.P.C. and was sentence to 10 years R.I. fine of Rs. 2000/- and in default of payment of fine to further undergo six months imprisonment. However, the accused/appellant Alok Haldar and two other co-accused Smt. Renu Haldar and Smt. Suchitra Haldar were acquitted of the charge U/S 304-B IP.C.

2- Brief facts giving rise to this appeal are that marriage of Smt. Seema and accused/appellant Alok Haldar was performed on 13-5-2001. The inlaws of Smt. Seema used to treat her with cruelty for their unlawful demand of dowry. On 16-04-2003, Dev Prasad Vishwas, brother of Smt. Seema got information that his sister was murdered by the inlaws. On receiving information Dev Prasad Vishwas along with Jogesh Mandal, Moti Lal, Sunil Rai etc went at the house of the accused and saw that his sister was dead. Thereafter he lodged written report, Ext. Ka. 1 at P.S. sitarganj. On the basis

of written report, chick F.I.R. Ext. Ka. 20 was prepared at the Police Station and case was registered in the G.D. against the accused/appellant and two others. The inquest on the dead body of deceased Smt. Seema was conducted by the police on 16-4-2003 and inquest report Ext. Ka. 14 was prepared. The dead body was sealed and sent for post mortem along with photo laas, Police Form No 13, letter to C.M.O. for post mortem, sample seal and form No.33, Exts. Ka. 15 to ka. 19 respectively. The post mortem on the dead body of deceased was conducted at S.S. Jeena, Hospital Haldwani on 17-4-2003 at 12.30 P.M. The I.O, also took into possession the piece of saree and stool which was allegedly used by the deceased for committing the suicide vide recovery memo Ext. ka. 13. He also took into possession one register and one copy of the deceased vide memo Ext. ka. 10 and also took into possession the marriage card, bill of ornaments, furniture, T.V., Diary and other articles vide memo Ext. Ka. 7. Recovered articles were also sent to Forensic Lab for examination. After completing the investigation the I.O. submitted charge sheet, Ext. ka. 12 against the accused persons.

4- On committal of the case to the court of Sessions the Sessions Judge framed charge U/S 304-B I.P.C. against the accused persons. They pleaded not guilty and claimed to be tried.

5- The prosecution to prove its case examined P.W.1 Dev Prasad, P.W.2, Devasish Kumar Rai, P.W.3 Ishan Vishwas, P.W.4, Dr. K.D. Pandey, P.W.5, Ranjit Singh Boa, P.W. 6, Samar Dev Nath and P.W.7, Constable Birendra Singh.

6- P.W. 1, Dev Prasad is the complainant of the case. He has deposed that the accused/appellant Alok Haldar and his family members were not happy with the dowry given by him in his sister's marriage and used to illtreat his sister. He also alleged that he had given a motorcycle; Rs. 10.000/- cash and other items in the dowry. He also stated that prior to the accident he along with Devasish, and Mangu went to the inlaws house of his sister and tried to pacify the illegal demand of dowry of the accused and his family members. On 16-4-2003 he got information that his sister was murdered by her husband and inlaws. He went there the same day at 8.30 P.M. and reported the matter to the police chauki Shakti Farm. He has proved the F.I.R. Ext. ka. 1. This witness also proved the bills of the so called articles given by him to the accused in dowry, Ext. Ka. 3 Ka.6 and Fard, Ext. Ka. 7 of the bills taken into possession by the I.O.

7- P.W.2, Devasish and P.W.3, Ishan Vishwas also supported the evidence of P.W. 1, Dev Prasad on the point of dowry demand and illtreatment of the deceased by her husband and inlaws.

8- P.W. 4, Dr. K.D. Pandey has conducted post-mortem on the dead body of deceased Smt. Seema on 17-4-2003 at 12.30 P.M. in the S.S. Jeena Hospital, Haldwani. The doctor found that rigor mortis had passed off from whole of the body. The doctor found following antimortem injuries on the person of Smt. Seema deceased:-

1- Abraded contusion 2cm x 1cm on the right side of face, 2 cm below right eye.

2- Abraded contusion 2 cm x 1.2cm on the left side of face, 2.5 cm below left eye.

3- Ligature mark:

(i) Triangular ligature mark on the anterior part of the neck over the thyroid cartilage and adjoining parts, more in the right side, its joint is downwards, size 1 1cm x 3cm over exploration of subcutaneous, haemorrhage present, thyroid cartilage is broken hyoid bone is intact. Trachea and larynx congested and filled with froth.

(ii) 2nd ligature mark 2cm x 0.75cm present oblbliquely encircling the neck, just above thyroid cartilage on the upper part of 1st ligature mark extending upto the posterior and upper part of the right side of the neck and on the left side to the tip of mastoid process, exploration of subcutaneous haemorrhage present.

In the opinion of the Medical Officer the cause of Death was asphyxia due to strangulation and the death was caused 1 ½ days before, The witness proved the post mortem examination report, Ext. Ka.8.

9. P.W.5, Ranjit Singh Bora, Circle Officer has investigated the case and deposed about the steps taken by him during the investigation and also proved the prosecution papers prepared by him.

10- P.W. 6, Samar Dev Nath had deposed that on the day of the occurrence on receiving information about the death of Smt. Seema he also reached at the place of the occurrence and saw that the police break-opened the door and found the dead body of Smt. Seema hanging with piece of saree inside the room. The police took into

possession the piece of saree and stool and prepared Fard, Ext. Ka. 13. He is also witness of inquest.

11. P.W.7, Constable Birendra Singh is a formal witness. He has drawn chick F.I.R., Ext. Ka.20 on the basis of written report and made entries in the G.D. regarding registration of case.

12- The accused persons in their statements U/S 313 Cr.P.C. denied the prosecutionc are and stated that they have been falsely implicated in the case. They did not adduce any evidence in their defence.

13- The learned Sessions on evaluation of prosecution evidence and having heard learned counsel for the parties, came to the conclusion that the prosecution has not been able to establish the case U/S 304-B I.P.C. against the accused persons and accordingly acquitted all the accused from this charge levelled against them. However, the learned Sessions Judge found the accused/appellant Alok Haldar guilty of offence U/S 306 I.P.C. holding that he treated the deceased Smt. Seema with cruelty; he never cohabited with her; after marriage the accused/appellant neglected the deceased, therefore, due to this wrongful act of the appellant, his wife Smt. Seema was compelled to commit suicide and accordingly sentence him to 10 years R.I. and fine of Rs.2000/- and in default of payment of fine to further undergo six months imprisonment.

14- Feeling aggrieved, the accused/appellant has come up in appeal before this court.

15- I have heard learned counsel for the appellant, learned A.G.A. and perused the record.

16- Learned counsel for the appellant has argued that the only point involved in this appeal is as to whether a case under Section 306 I.P.C. against the appellant is made out or not. According to the submission advanced by the learned counsel for the appellant, the ingredients of Section 306 I.P.C are not attracted in this case and the appellant in any manner cannot be held guilty of committing the offence under Section 306 I.P.C.

17- Learned counsel for the appellant has also submitted that the deceased committed suicide on her own under some depression or frustration but the suicide was not the direct result of the quarrel and the evidence on record no where indicate that the appellant had in fact put the deceased to any harassment which may give rides to the presumption that the suicide had been abetted by the appellant.

18- Learned counsel for the State on the other hand has argued that the appellant had subjected the deceased to constant cruelty although there is no evidence of demand of dowry as has been held by the trial court but the appellant did not fulfill his matrimonial obligation with the deceased and this circumstance compelled the deceased to commit suicide. The manner in which the cruelty has been committed by the appellant against the deceased automatically give rise to the presumption that the suicide had been abated by the appellant who is the husband of the deceased.

19- Learned counsel for the appellant has submitted that in view of the provision of Section 107 of I.P.C. the word ‘instigate’ can be an incitement or urging

to do some drastic or inadvisable action or to stimulate or incite. Therefore, the presence of mens rea is the necessary concomitant of instigation. He has submitted that the evidence and the circumstances of the case nowhere indicate that the deceased was subjected to any harassment by the husband. He has also submitted that merely the women committed suicide within seven years of her marriage and that she was subjected to cruelty by the husband does not automatically gives rise to the presumption that suicide has been abetted by the husband.

20- Learned counsel for the appellant has cited before me various Hon'ble Apex Court decisions which are as follows:-

1. Sanju Vs State of M.P. reported in (2002) 5 Supreme Court Cases 371
2. Netai Dutta Vs State of W.B. reported in (2005) 2 supreme Court Cases 659
3. Hans Raj Vs State of Haryana reported in (2004) 12 Supreme Court Cases 257
4. State of Gujarat Vs Sunik Kumar K Jant reported in (1996) 2 GLR 797
5. Vedprakash Vs State of M.P. reported in 1995 Crl. L. J. 893 (M.P)
6. Manish Kumar Sharma Vs State of Rajasthan reported in 1995 Crl. L. J. 3066 (Raj)
7. Hira Lal Jain Vs State reported in 2001 Crl. L. J. 1212 (Del)
8. Mahendra Singh Vs State of M.P. reported in 1995 Supp(3) Supreme Court Cases 731

21- I have carefully gone through the judgment cited by the learned counsel for the appellant and I am of the view that the judgment cited by the learned counsel for the appellant are not applicable to the facts and circumstances of the present case. In the instant case, the evidence on record shows that the deceased – Seema used to maintain a diary and that diary has been produced by the prosecution before the trial court. This diary is in the handwriting of the deceased – Seema as is evident from the report of the handwriting expert. This diary at most of the places indicate that the appellant had not been fulfilling his matrimonial obligation with the deceased since from first day of the marriage till her death., This diary also indicated that the deceased – Seema was not liked by the appellant on account of her dark complexion. The deceased – Seema has also mentioned at most of the places in her diary that the appellant was leading an adulterous life. The most important aspect in the case is that as per the personal diary of the deceased – Seema it is Quite clear that the appellant did not cohabit with the deceased from the very first day of the marriage till her death thereby compelling her to live a life of celibacy while staying with her husband who for the best reason known to him did not cohabit with the deceased even once after the marriage.

22- Certainly these are the circumstances, which compelled the deceased to commit suicide. It is not a case where the deceased committed suicide due to her hypersensitive nature. The evidence available on record clearly established that suicide by the deceased was a result of cruelty, humiliation, depriving the deceased from cohabitation and compelling her to live a life of celibacy. The evidence further establishes that the

deceased was also compelled to commit suicide on account of the fact that the appellant was living an adulterous life. The Hon'ble three Judges Bench of Apex Court in a case. A. Jayachandra Vs Aneel Kaur reported in (2005) 2 SCC 22, has held that "the cruelty is necessarily a matter of inference to be drawn from the facts and circumstances of the case and a person who is enjoying a normal health being deprived of normal cohabitation by the spouse and thus indicating anguish and frustration could be said to have been subjected to cruelty."

23- The Hon'ble Supreme Court in the aforesaid judgment has also observed that "the cruelty need not be physical and if from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty."

24- The material available on record shows that the appellant was married with the deceased on 13.05.2001 and Seema on account of the cruelty committed by the appellant died on 16.04.2003. During this period of approximately 2 years the appellant compelled the deceased to live a life of celibacy. The husband living with his wife and depriving her from cohabitation thereby putting her to constant anguish and frustration had certainly been putting the deceased to perpetual torture which is not only mental but also physical injury and even for the medical point of view is detrimental to the healthy woman.

25- The abetment in committing suicide involves a mental process of instigating a person or intentionally adding that person in doing of a thing. In the instant case, the appellant has rightly been held guilty by the trail court for committing offence under Section 306 I.P.C. on the basis of the evidence which clearly establishes that the appellant failed to provide conjugal relationship with the deceased and on the basis of this circumstance, it can be safely inferred that the appellant committed cruelty against the deceased by putting her to perpetual torture and that torture continued unabated and the suicide was on account of victim not being able to any further bear torture or harassment. The appellant has thus rightly been convicted for the offence under Section 306 I.P.c.

26- I do not find any infirmity in analysis of evidence by the trail court, on the basis of the assessment of evidence I come the conclusion that the appellant has been rightly convicted by the trail court for the offence under Section 306 I.P.C.

27- The impugned judgment and order dated 03.05.2005 passed by the trail court needs no interference and deserve to be confirmed.

28- Accordingly, the appeal fails and is dismissed. The conviction and sentenced imposed against the appellant vide judgment and order dated 03.05.2005 passed by the trail court is confirmed.

**(B.C. Kandpal, J.)**

Dated: August 1, 2006.

Aswal.